

# A REPORT OF THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION

December 1992

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## A Report to the 53rd Legislature

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A Report to the 53rd Legislature

Prepared by  
Susan Byorth Fox, Staff Researcher

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## PREFACE

The nation's first legislative apportionment was based on the first federal census, taken in 1790. At that time, a free man counted as one person and a male slave counted as three-fifths of a person. The apportionment process also had to recognize the intent of the framers of the U.S. Constitution that a legislative district be "within a day's horse ride".

Using the 1990 Census as its base, the Montana Districting and Apportionment Commission (Commission) has come remarkably close to guaranteeing "one person, one vote", as required by the 15th amendment adopted in 1870, and protecting minority rights, as required by the Voting Rights Act of 1965. The concept of the "day's horse ride", however, has fallen victim to the sparse population in some areas of Montana.

The Commission has been fair, open, receptive, patient, and flexible. It has worked as a cohesive group determined to put fairness above politics. The challenge that any legislative reapportionment faces is to guarantee equal representation to population groups, while creating reasonable geographic boundaries.

The Montana Constitution requires the Commission to hold, in Helena, one public hearing on its plan. To provide for better public input, the Commission also held 12 widely publicized hearings around the state after the staff researcher had visited the areas and formulated several plans for each. Written testimony was accepted for a week after each hearing. The Commission is still open to suggestions until the final draft is completed in February 1993.

Eleven substantive votes on the various plans were 4 to 0, and one vote was 3 to 1. Once, it was necessary for the presiding officer to break a tie vote. Votes on all other matters were unanimous.

Credit for the fairness of this plan goes to the excellent nonpartisan work by the staff researcher, the cooperative attitudes of the Commissioners, and the input and compromises of the people who testified.

By combining meetings with hearings, by holding conference calls, and through general prudence, the Commission spent approximately 60% of its budget through November 1992.

Montana can be proud of its method of districting and apportioning. It is 1 of 11 states with a mandated Commission and 1 of only 5 states that does not allow Commissioners to run for public office for 10 years after serving as a Commissioner.

The process has been educational and enlightening. It has been a delight to work with this Commission and this staff.

Jean Fallan Barrett

Chairwoman

Montana Districting and Apportionment Commission

## INTRODUCTION

In accordance with the Montana Constitution, the leadership of the 51st Legislature appointed the members of the Montana Districting and Apportionment Commission (Commission) as follows:

Appointed by the Majority Leader of the Senate:

Selden S. Frisbee, Cut Bank

Appointed by the Majority Leader of the House:

James J. Pasma, Havre

Appointed by the Minority Leader of the Senate:

H.J. (Jack) Pinsoneault, Missoula

Appointed by the Minority Leader of the House:

Jack D. Rehberg, Billings

In May of 1989, the four appointed Commission members selected former Montana Supreme Court Chief Justice Frank Haswell as chairman. Former Chief Justice Haswell passed away in 1990. In April of 1990, the Commission members selected former Montana Supreme Court Justice L.C. Gulbrandson as chairman. Upon his resignation, the Commission members selected Jean Fallan Barrett of Helena as chairwoman in January of 1992.



## HISTORICAL PERSPECTIVE

### Congressional Apportionment

Montana began statehood with one congressional representative.<sup>1</sup> The state gained the second seat in 1912, following the 1910 census. The seats were at large through the 1916 election, and in 1917, two districts were formed. The boundaries of the two districts remained unchanged until 1965, when because of federal court rulings, seven counties on the east slope of the Rockies were moved from the eastern district to the western district.<sup>2</sup> Now, 104 years after statehood, Montana will again have a single congressional representative, based on a congressional apportionment formula upheld by the U.S. Supreme Court.

### 1889 Constitution

The 1889 Constitution of the State of Montana first set the legislative assembly at 16 members of the Senate and 55 members of the House of Representatives. The duty to divide the state into future districts rested with the First Legislative Assembly. There was to be no more than one Senator from each county, and the terms of the Senators were staggered after the first assembly.<sup>3</sup>

The legislative assembly was directed to provide for an "enumeration of the inhabitants of the state in the year 1895, and every tenth year thereafter . . ." and to revise and adjust the apportionment for both legislative and congressional representatives "according to ratios to be fixed by law".<sup>4</sup>

The first references to criteria for districting were present. If a district was composed of more than one county, "they shall be contiguous, and the districts as compact as may be". Also, the inviolable nature of county lines began: "No county shall be divided in the formation of representative districts."<sup>5</sup>

When a new county came into existence, it was entitled to one Senator.<sup>6</sup> The constitution named a Senate district for each of the existing 16 counties. The original apportionment of Representatives for each county was as follows:

- The county of Beaverhead shall have two (2).
- The county of Madison shall have two (2).
- The county of Gallatin shall have two (2).
- The county of Jefferson shall have three (3).
- The county of Deer Lodge shall have seven (7).
- The county of Missoula shall have five (5).
- The county of Lewis and Clarke [sic] shall have eight (8).
- The county of Choteau [sic] shall have two (2).
- The county of Meagher shall have two (2).
- The county of Silver Bow shall have ten (10).
- The county of Custer shall have two (2).
- The county of Yellowstone shall have one (1).
- The county of Fergus shall have two (2).
- The county of Park shall have two (2).
- The county of Cascade shall have two (2).
- The counties of Dawson and Cascade shall have one (1) jointly.
- The counties of Deer Lodge and Beaverhead shall have one (1) jointly.
- The counties of Jefferson and Gallatin shall have one (1) jointly.<sup>7</sup>

#### Malapportionment and the 1960s' Court Decisions

By the 1960s, malapportionment existed nationwide, and it was brought to the courts' attention. In 1962, in Baker v. Carr, the U. S. Supreme Court "held that state . . . districting cases are justiciable, and expressed confidence that courts would prove able to "fashion relief" where constitutional violations might be found".<sup>8</sup> In 1963, in Gray v. Sanders,<sup>9</sup> the court went further in defining more specific standards by bringing the concept of "one person, one vote" out of the constitutional closet. In 1964, the court in Wesberry v. Sanders, upheld a strict equality provision for

congressional districts<sup>10</sup> and in Reynolds v. Sims provided that "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis".<sup>11</sup> The court did allow some deviation from the strict equality standard of the congressional districts for state legislative districts based on "rational state policy".<sup>12</sup>

Montana was no exception to malapportionment. By 1960, "The state's eight most populous counties contained about 52% of the population but elected only 42.5% of the House and 15% of the Senate."<sup>13</sup> After reapportionment did not occur in three successive legislative sessions following the 1960 census, a suit was filed in federal District Court to force reapportionment. When the legislative attempt failed, a three-judge federal panel formulated a reapportionment plan that retained county lines and some multimember districts.<sup>14</sup> This plan was effective from the 1966 election for the 1967 legislative session up to 1971.

At the general election in November 1966, a constitutional amendment was adopted that stated that the Legislature would be apportioned on the basis of population determined by the U.S. census.<sup>15</sup>

### 1972 Constitution

The 1972 Constitutional Convention addressed the reapportionment issue and made substantive changes in past practices. A new provision required single-member Senate and House districts, with two House districts constituting a Senate district. Mandates were adopted for population equality and for compactness and contiguity of districts. Also, "with the adoption of the new constitution, the people of Montana divested the legislature of all power concerning apportionment of the legislature, except for the power of recommendation".<sup>16</sup>

The creation of a five-member Commission outlined in the 1972 Constitution was influenced by the fact that by the end of the 1960s, "more than one

third of the states had developed some specialized non-legislative reapportionment agency either to initiate the matter or to backstop legislatures that failed the task".<sup>17</sup> Montana's Legislature had proved the difficulty of the Legislature reapportioning itself, and the constitution provided for an autonomous Commission. In a 1989 survey by the National Conference of State Legislatures, Montana was one of 11 states that had some form of Commission that was not merely advisory or contingent in nature. In only five states, including Montana, are the Commission members not allowed to be public officeholders.

The first redistricting plan was filed with the Secretary of State in 1974. In late 1974, a constitutional amendment<sup>18</sup> returned the Legislature to meeting in regular biennial legislative sessions and, therefore, complicated the subsequent redistricting schedules. The 1972 Constitution requires that "The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available."<sup>19</sup>

A state District Court ruled that the 1981 Commission was to submit its plan to the first regular session of the Legislature following the Commission's appointment or to the first regular session of the Legislature following availability of census figures, whichever came later. Because the final census information was not available until 1981, the language effectively meant the 1983 legislative session.<sup>20</sup> Although the current Commission was appointed during the 1989 Legislature, it must present its plan to the 1993 legislative session because census data became available after the 1991 legislative session had convened.

#### Montana Districting and Apportionment Commission

The Commission is composed of five citizens, none of whom may be public officials. The majority and minority leaders of each house appoint one member, and the four appointed Commissioners select the fifth member, who serves as the presiding officer. If the four members fail to select the



fifth within the prescribed 20-day time limit, the majority of the Montana Supreme Court selects the presiding officer. The plans filed in 1974 and 1983 have withstood legal challenges and are a testament to the success of the use of a Commission in the redistricting process.

#### The Voting Rights Act

The 15th amendment to the United States Constitution has, since 1870, guaranteed the right to vote to all citizens, regardless of race, color, or previous condition of servitude. A reconstructionist attempt to ensure that right took almost a century to be clearly outlined and enforced and culminated in the Voting Rights Act of 1965, with amendments in 1970, 1975, and 1982. The 1975 amendments extended protection against denial or abridgement of the right to vote to "language minority groups", including Native Americans, in addition to traditionally recognized minority groups that are identified by race or color. The 1982 amendments further delineate how to determine whether vote dilution occurred. The Voting Rights Act, subsequent amendments, and litigation during the 1980s were applied as guidelines for the Commission and resulted in greater protection of minority voting rights for Native Americans in Montana.



## CONGRESSIONAL APPORTIONMENT

On April 10, 1991, the Commission filed a one-district congressional plan for the State of Montana. The Commission's action was taken because of the results of congressional apportionment and because the Commission received from the Office of the Clerk of the United States House of Representatives a certificate of entitlement that mandated the action.

On behalf of the State of Montana, the state Attorney General filed a suit in federal District Court, challenging the constitutionality of the congressional apportionment. An October 18, 1991, decision by a special three-judge federal panel ruled in favor of Montana, but that decision was appealed to the United States Supreme Court.

During the January 1992 Special Session, the Legislature requested the Commission to "ADDRESS THE PROBLEMS, ALTERNATIVES, AND CONTINGENCIES ARISING FROM THE STATE'S SUIT FOR RELIEF FROM A CONGRESSIONAL APPORTIONMENT THAT ALLOCATED ONLY ONE CONGRESSIONAL SEAT TO THE STATE OF MONTANA". (Chapter 2, Special Laws of January 1992) Acceding to the request, the Commission filed a two-district congressional plan on January 29, 1992, as a contingency.

The United States Supreme Court ruled on March 31, 1992, that the apportionment formula used since 1941 was constitutional; thus, Montana became the seventh state with a single congressional district.<sup>21</sup>



# CRITERIA

The 1983 Commission adopted five criteria for legislative districts, in addition to constitutional mandates. The criteria addressed governmental boundaries, geographic boundaries, communities of interest, consideration of existing district boundaries, and a goal of a plus or minus 5% deviation from the ideal district population. A federal District Court upheld the 1983 plan drawn under these criteria, acknowledging that the Commission must balance conflicts between the criteria in arriving at a plan that embraced the entire state.<sup>22</sup>

The current Commission defined and adopted similar criteria for the 1993 legislative redistricting effort.

## I. MANDATORY GUIDELINES AND CRITERIA

1. Compactness and contiguity. Each legislative district must consist of compact and contiguous territory. (Article V, section 14, Montana Constitution)
2. Population equality. All legislative districts must be as nearly equal in population as is practicable. (Article V, section 14, Montana Constitution)
3. Maximum population deviation. The relative population deviation from the ideal population for an individual district may not exceed plus or minus 5%.

(NOTE: Under the equal protection clause of the 14th amendment to the United States Constitution, districts for state Legislatures must adhere to the "one person, one vote" principle of equality, though to a lesser standard than for congressional districts. A series of U.S. Supreme Court decisions established a 10% *de minimis* rule under

which persons challenging a plan have the burden of proof if the overall range is 10% or less and the state has the burden of proof if the overall range is above 10%. Exceptions to this standard include Mahan v. Howell, in which a 16.4% deviation was allowed, based on an attempt to preserve political subdivision boundaries.<sup>23</sup>

Additionally, the 1983 reapportionment plan for Montana, with a 10.94% overall deviation in House districts and a 10.18% overall deviation in Senate districts, was upheld by a federal District Court in McBride v. Mahoney.<sup>24</sup>)

4. Population base. The official, final results of the 1990 federal decennial census are the only permissible data base for the population figures used in developing the state legislative redistricting plan.
5. Protection of minority rights. The redistricting plan may not dilute the voting strength of racial or language minorities and must comply with section 2 of the federal Voting Rights Act.<sup>25</sup> A district plan or proposal for a plan is not acceptable if it affords members of a racial or language minority group less opportunity than other members of the electorate "to participate in the political process and to elect representatives of their choice".

## II. OTHER CRITERIA AND POLICY CONSIDERATIONS

The Commission also adopted the following discretionary, nonprioritized guidelines:

1. Local government boundaries. Consideration will be given to the boundary lines of existing local government units, including counties, cities, towns, and Indian reservations. The division of local government units into legislative districts should be avoided except as necessary to meet equal population requirements or to comply with the Voting Rights Act.

2. Precincts. District lines should follow voting precinct lines to the extent practical in order to minimize voter confusion and the cost of election administration.
3. School districts. School district lines should be considered whenever practical.
4. Communities of interest. When possible, communities of interest should be preserved. Communities of interest include trade areas; areas linked by common communication and transportation systems; and areas that have similarities of interests, such as social, cultural, and economic interests common to the population of the area.
5. Geographical boundaries. Geographical boundaries will be respected to the extent possible.
6. Existing districts. Whenever practical, consideration will be given to existing legislative district lines.
7. Political fairness. Districts may not be drawn for the purpose of favoring a political party or to protect or defeat an incumbent legislator.





## NUMBER OF LEGISLATIVE DISTRICTS

The 1972 Constitution mandates that "the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members".<sup>26</sup>

The concept of reducing the size of the Legislature was considered by the Commission in early meetings. However, on April 9, 1991, the Commission unanimously adopted a motion that the Commission apportion the state for 100 House districts and 50 Senate districts. Although a 1973 Attorney General's opinion stated that the Commission has the exclusive power to determine the size of the legislative houses and the geographical makeup of the legislative and congressional districts, subject only to the restrictions of Article V, Montana Constitution,<sup>27</sup> testimony was given that the Commission may be subject to legal challenge and that a reduction in the number of districts would most clearly impact rural Montana.



## 1990 CENSUS DATA AND COMPUTER USE

The 1990 census data was available in computer format, and for the first time, the process was fully computerized. The U.S. Bureau of the Census provided computerized geographic files, called the TIGER/Line files, that contain population data and highly detailed map data for all the counties in the State of Montana. For the 1990 redistricting effort, the census file was linked together with the TIGER/Line file and enabled the Commission's staff researcher to select census blocks to be included in a district from a map displayed on a computer screen. The computer would also display population data. The researcher could then add or remove blocks until the ideal or near ideal population was obtained. Once a draft plan was tentatively finalized, a map was plotted for distribution and for display at public hearings.

The Montana Legislative Council provides technical and clerical support to the Commission, as required by law.<sup>28</sup> For this project, the Council staff is using a Geographic Information System (GIS) that runs ARC/INFO software from the Environmental Systems Research Institute (ESRI). The Council purchased a stand-alone system from ESRI for redistricting the state. The system includes the Core Redistricting Application written in Arc Macro language. ARC/INFO and the Core Redistricting Application are running on a SUN Sparcstation 2 computer that runs the UNIX operating system.<sup>29</sup>

The census provided information from the state level, the largest unit of measure, to the census block, the smallest unit of measure. The 1990 census was the first in which all counties in the state were divided into the smallest unit of measure, the census block. (In the 1980 redistricting process, enumerator districts had been the smallest unit of measure for most counties.) A census block can be as small as a city block, in the urban areas, to as large as areas that encompass mountains, stream drainages, or other geographical features. For each census block, population data is available, including race and voting age data. Montana did not participate in

the voter tabulation district project and thus did not have population by voter precincts. Also, because the computer map files were based on geographic data, census block lines did not always conform to political or administrative subdivisions, such as precincts or school districts, that are based on township and range data. This lack of conformity led to difficulty in following precinct and school district lines.

## CHANGES IN MONTANA POPULATION

The 1990 census data reported that there were 799,065 Montanans, only a 1.6% increase from 1980. For 100 House districts, the ideal population is 7,990.65 persons. The plus or minus 5% deviation from ideal adopted by the Commission allowed an approximate 399-person cushion. The 1980 ideal district size was 7,866.9 persons, and the 1974 ideal district size was 6,944 persons. Although the net increase in population was small, the shift in population was more dramatic.

Only 17 Montana counties experienced an actual increase in population. The largest percentage increase and largest total increase in population were in Gallatin County. The largest percentage decrease in population was in Prairie County, while the largest total decrease in population was in Silver Bow County. While the eastern two-thirds of Montana experienced the greatest decrease in population, there was also a loss in western Montana in Powell, Granite, Deer Lodge, and Silver Bow Counties.

The Flathead and Lake Counties area gained a House district, as did the Missoula and Ravalli Counties area and Gallatin County. A district was lost in Deer Lodge County, in Silver Bow County, and in the Richland and Roosevelt Counties area. The loss of population in eastern Montana impacted the Yellowstone County area, which was used to recoup population for approximately one-half of a House district.

The slight overall population growth in the state does not reflect the greater population growth of racial minorities in Montana. Population growth was found among the Native American population, which grew by 27.9% or 10,409 persons, and among the Hispanic population, which grew by 22.1% or 2,200 persons.<sup>30</sup>



## THE REDISTRICTING PROCESS

In October 1991, the Commission unanimously accepted a staff proposal to begin the redistricting process in the northwest corner of the state. It was believed that because of the natural geographic barriers (the Idaho and Canadian borders and the Continental Divide) and significant population growth, this area would be the best to begin with so that the Commission would avoid "painting itself into a corner". As the Commission proceeded, it was also decided that the process should end in Yellowstone County. Proceeding basically west to east and north to south, the loss of population in eastern Montana could be accommodated and the relatively large population in Billings could provide more alternatives.

For each multicounty region of the state, the staff researcher for the Commission made a preliminary visit to meet with the County Clerk and Recorders, political party central committee representatives, area legislators, tribal leaders, and interested persons. The purpose of the visits was to share the criteria, population data, and redistricting possibilities and to receive comments. Following the staff visit, the researcher developed alternative plans for that region by using the computer system and by applying the ideas gathered from the area and the Commission's criteria.

Once the alternative plans were developed, maps, written descriptions of the new districts, and the population figures were sent to the Commission members, County Clerk and Recorders, political party central committees, legislators, and tribal leaders. To encourage public participation and understanding, the information was mailed 10 days to 2 weeks prior to the public hearing.

Twelve evening public hearings were held between April and September 1992. Hearing sites were Kalispell, Missoula, Anaconda, Shelby, Wolf Point, Glendive, Hardin, Great Falls, Lewistown, Helena, Bozeman, and Billings. Following each public hearing, the Commission accepted written testimony

for 1 week, directed staff to make any changes or amendments, and tentatively adopted a plan for each region during a conference call or at a subsequent organizational meeting held prior to the next public hearing.

Upon completion of the 12 public hearings and tentative adoption of the regional plans, the Commission held a November 19 meeting after the 1992 election for the newly elected holdover Senators to provide input to the Commissioners regarding desired pairings of the House districts to form new Senate districts. The holdover Senators are the Senators elected in 1992 who will serve during the transition to the new districting system. The statutorily required public hearing on all 100 House districts and 50 Senate districts was held November 30, 1992. The Commission will finalize its plan and will submit it to the Legislature, as required, by the 10th legislative day of the 52nd Legislature.



## DISTRICT DESCRIPTIONS

The Northwest Region of Flathead, Lake, Lincoln, and Sanders Counties was the first region to be redistricted and comprises 13 complete House districts. Population growth in the Kalispell area resulted in an additional House district. The Libby area district changed only slightly. The southeast portion of Lincoln County remains with a Sanders County district. The remainder of Sanders County is joined with Mineral County and a portion of Missoula County for a 14th House district. The districts in Lake County maintained county lines. The Native American population in Lake County is approximately 30% and, therefore, does not constitute a majority of the population in the district. A plan that offered to combine portions of the Flathead Indian Reservation with the Blackfeet Indian Reservation was not adopted by the Commission because of the criteria, primarily relating to compactness and the physical barrier of the Continental Divide, adopted by the Commission.

The Western Region of Missoula, Mineral, and Ravalli Counties, combined with the Northwest Region, completed 26 districts and sends 4,940 persons to a 27th district. The remainder of Sanders County, Mineral County, and western Missoula County constitutes a House district. An additional House district was gained in the combined Missoula County and Ravalli County area, and Ravalli County pulled a third House district completely within its boundaries. The 27th district in Missoula County constitutes a gain of over one-half of the population needed for an additional seat. The districts in Missoula proper did not change drastically, but the surrounding areas gained population so that the suburban-rural districts changed somewhat.

The Southwest Region included the remainder of Missoula County and Granite, Powell, Deer Lodge, Silver Bow, and Beaverhead Counties. The third reapportioned region completed 35 districts. Because of population loss, a House district was lost in each of Deer Lodge and Silver Bow

Counties. The positive deviation used in this region, recommended by public testimony, allowed the completion of this region with the majority of each county intact. The 27th district from Missoula County was left with 4,940 persons; to complete this district, all of Granite County and the northern portion of Powell County were necessarily added to prevent splitting the town of Deer Lodge and the lightly populated Granite County. The remainder of Powell County and Deer Lodge County comprises two districts. Silver Bow County retained four complete House districts, and the balance of the county will be joined with portions of Beaverhead, Madison, and Gallatin Counties for a House district. The majority of Beaverhead County is one district.

The Western Hi-Line Region included Glacier, Toole, and Pondera Counties and comprises three House districts. Teton County was not included with this region for two principal reasons: (1) Pondera County would be split three ways; and (2) the ripple effect would break most county lines east to the North Dakota border. Teton County needed 1,719 more persons to complete an ideal district, and the remainder was made up from Cascade County. Toole County is separated from Liberty County in order to preserve county lines. The adopted plan maintained or bettered the Native American percentage in a Glacier County district and increased the Native American percentage in the shared Pondera and Glacier Counties districts because of an increase in Native American population.

The Eastern Hi-Line Region included Liberty, Hill, Chouteau, and Blaine Counties and comprises four House districts. The plan also includes the section of Phillips County that is Fort Belknap Indian Reservation land. Liberty County is intact and combined with Chouteau County and with the Joplin-Inverness school district of Hill County for a House district. Hill County has one complete House district, shares a portion of another district with Liberty and Chouteau Counties, and shares two House districts with Blaine County, including a "majority" Native American district. The plan increases the Native American percentage in the district by combining the

population of the Rocky Boy Indian Reservation in Hill County and the population of the Fort Belknap Indian Reservation in Blaine and Phillips Counties.

The Northeast Region of Phillips, Valley, Daniels, Sheridan, and Roosevelt Counties comprises four House districts. There was a considerable population loss in all but one district in this area since the 1980 census. In order to complete four districts in this area, the portion of Roosevelt County that was previously shared with a Richland County district was needed. A "majority" minority district was maintained on the Fort Peck Indian Reservation in Roosevelt County, with the percentage of Native Americans increasing slightly. Because of public testimony, Daniels and Sheridan Counties remained together in a House district with part of Valley County, which resulted in the city of Glasgow being split into two House districts--a Phillips and Valley Counties district and a Valley and Roosevelt Counties district.

The Southeast Region generally consists of Eastern Montana south of the Missouri River and east of Billings. Garfield, McCone, Richland, and Dawson Counties complete three House districts, compared to the four House districts currently in place. The Sidney and Glendive districts expanded to encompass more rural population. Garfield, McCone, the remainder of Richland, and Dawson Counties are one House district. This is one of the largest House districts--from Mosby to Fairfield is 198 miles.

Wibaux, Fallon, Carter, and Powder River Counties compose one House district, which is 255 miles from end to end, using available roads. Powder River County is now intact. Miles City constitutes a House district, and the remainder of Custer County, Prairie County, and the northern portion of Rosebud County, including Forsyth, compose a House district. The Colstrip area and Treasure County are joined with a portion of Yellowstone County to complete a House district. The Northern Cheyenne Indian Reservation and the southern portion of Rosebud County are included in a House district with

eastern Big Horn County. The Crow Reservation in western Big Horn County and a portion of Yellowstone County form a House district.

Two districts that include the Crow Indian Reservation and the Northern Cheyenne Indian Reservation have increased the percentage of Native Americans. The Big Horn and Yellowstone Counties district maintains the current Native American percentages, and the percentage of Native Americans increases in the Big Horn and Rosebud Counties district.

The Central and West Central Region is composed of 12 counties and 21 districts. To complete the 21 districts required the use of the negative deviation for Cascade, Judith Basin, Fergus, Petroleum, Musselshell, Golden Valley, and Wheatland Counties. Cascade County lost population, and Lewis and Clark County gained population; therefore, rural Cascade County is used to assist Cascade County House districts to recoup population. Teton County also brought pressure from the north, and additional population was needed to complete its district. Cascade County maintains its nine House districts and shares population with four other House districts. More of Cascade County (the areas of Eden, Sand Coulee, Tracy, Stockett, Vaughn, and Sun Prairie) will be in total Cascade County districts than in current House districts.

The Helena Valley experienced growth that resulted in districts becoming smaller in area. Because of population growth, Lewis and Clark County maintained its five House districts and brought the shared Lewis and Clark/Cascade County district more into Lewis and Clark County. Lewis and Clark County now shares a portion of a seventh district with Broadwater and Meagher Counties. The shared district portions of Lewis and Clark and Cascade Counties remain mostly rural, but they will now come into the Helena Valley. The district also takes in Lincoln, which was left over from redistricting the west side of the Continental Divide, and has parts of three wilderness areas, the Continental Divide, and a portion of the Helena Valley. From Cascade County, the towns of Simms, Ulm, and Cascade remain in

this district. Broadwater County will be intact, and the district will share population with Meagher County and Monarch and Neihart from Cascade County. The district has added the area east of the Missouri River and a small area west of the river in the southwest corner of Lewis and Clark County. Jefferson County contained virtually the ideal population for a House district, which aided in the reunion of Broadwater County and did not adversely affect other surrounding counties. Statewide, there are only two counties, Jefferson and Carbon, that complete a single House district within their county boundaries.

Fergus, Judith Basin, and Petroleum Counties lost population, making the east/west and "doughnut" configuration difficult to maintain. The Lewistown area composes a House district, while the remainder of Fergus County is with Judith Basin and Petroleum Counties and, with the Belt area in Cascade County, completes another House district.

The South Central Region includes Gallatin, Park, Sweet Grass, Stillwater, Carbon, and Yellowstone Counties. This region was the last area to be redistricted and completes the districts that were not completed from bordering regions. A district was created by using a portion of Silver Bow and Beaverhead Counties, all of Madison County, and a portion of Gallatin County. Wheatland, Golden Valley, and Musselshell Counties form a district with a portion of Yellowstone County. The Big Horn County district is completed with a portion of Yellowstone County, as is the district that encompasses Colstrip and Treasure County.

Gallatin County experienced the greatest population growth in the state. Approximately 1,500 persons currently shared with Madison County are returned to a Gallatin County district, and a new, additional House district is created, resulting in six complete House districts and a portion of a seventh, in which the areas of Three Forks and Willow Creek complete the Madison County district.

Park, Sweet Grass, Stillwater, and Carbon Counties contain four House districts. The Gallatin-Park County line is maintained. Population growth in Park and Stillwater Counties shifts the Stillwater district out of Yellowstone County and into Sweet Grass County. Sweet Grass County is unavoidably split, but on a positive note--each of the House districts contains a county seat. Carbon County is just slightly over the ideal district population and so remains a single House district unto itself, as in 1983.

Yellowstone County was the last county to be redistricted. It maintains 14 House districts and shares population with three other House districts. A portion of the county will no longer be shared with Stillwater County. The Broadview, Comanche, and Acton areas will be shared with the Musselshell/Golden Valley/Wheatland Counties district. On the eastern county lines, the Crow Indian Reservation portion is joined with a Big Horn County district, and Huntley, Ballantine, Worden, and Custer are joined with Treasure County and a portion of Rosebud County. The downtown Billings districts lost significant population, while the suburban and rural districts gained considerably. Pressure from the east and the growth in the Billings Heights area balanced each other to maintain three, though differently configured, districts. The loss of population in the downtown area and the gain in the west Billings area caused a shift westward in the districts. The Laurel district essentially maintained population and allowed for slight variation but no major changes.

## NATIVE AMERICAN DISTRICTS

There are seven Indian reservations in Montana, and it was practical to create five districts in which Native Americans constitute a majority. There is also a district on the Flathead Indian Reservation with approximately 30% Native American population. The five Native American majority districts include: a House district on the Blackfeet Indian Reservation within Glacier County; a House district that includes the Rocky Boy and Fort Belknap Indian Reservations in Hill and Blaine Counties; a House district on the Fort Peck Indian Reservation within Roosevelt County; a House district that contains the Northern Cheyenne Indian Reservation and a portion of the Crow Indian Reservation between Rosebud and Big Horn Counties; and a House district that is comprised mainly of the Crow Indian Reservation and Big Horn County and that includes the Crow Indian Reservation portion of Yellowstone County. The percentage of total population and the percentage of voting age population for each district are presented below:

TABLE 1  
SUMMARY OF NATIVE AMERICAN MAJORITY DISTRICTS

RESERVATION	COUNTY	NATIVE AMERICAN POPULATION	PERCENTAGE OF TOTAL DISTRICT POPULATION	PERCENTAGE OF VOTING AGE POPULATION (18 and older)
Blackfeet	Glacier	5,632	69.65	66.36
Rocky Boy and Fort Belknap	Hill and Blaine	4,660	58.54	52.11
Fort Peck	Roosevelt	5,009	60.36	54.48
Northern Cheyenne and Crow	Rosebud and Big Horn	4,307	56.72	49.74
Crow	Big Horn and Yellowstone	4,555	59.7	52.99
Flathead	Lake	2,515	30.63	33.18





## CONCLUSION

From May 1989 through February 1992, the Commission met 10 times (once in a conference call), accomplishing the selection of three successive presiding officers, adopting a single congressional district and preparing a two-district contingency, and adopting criteria for the legislative redistricting. In April 1992, the Commission began holding the regional public hearings on legislative redistricting. From April through September 1992, the Commission held 12 public hearings, 7 organizational meetings (held prior to public hearings), and 2 conference calls to adopt regions. In November 1992, the Commission held a hearing on the pairing of Senate districts and the final, statutorily required public hearing.

In 1993, the Commission will present a plan to the 53rd Legislature by the 10th legislative day. The Legislature is allowed 30 days to comment, and the Commission has 30 days after receipt of comments from the Legislature to finalize a plan. By March 16, 1993, the Commission will present a final plan to the Secretary of State and the Commission will be dissolved. The final plan will become law and be in effect for the 1994 legislative election. Under 13-3-102, MCA, the changing of precinct boundaries to conform to legislative district boundaries must be accomplished within 45 days of the filing of the final plan.

Despite numerous complications, the Commission completed its task within its statutory time limits. The congressional apportionment was complicated by the appeal to the U.S. Supreme Court regarding the apportionment formula, but the Commission adopted a one-district plan and a contingent two-district plan. The legislative redistricting process was one that, despite its delayed start, went smoothly. The Commission spent a busy 6 months holding 12 public hearings; the hearings were well-attended, and the Commission adopted 10 of 12 regions unanimously.

The ideal district size was 7,990.65 persons, and a plus or minus 5% deviation (399 persons) was allowed. The mean deviation of the 100 House districts was 208 persons, and the mean percentage deviation was 2.60. The largest negative deviation was -397 (-4.97%), and the largest positive deviation was +399 (4.99%). The overall range in deviation was 796 persons, or 9.96%, below the 10% allowed by federal court decisions (see number 3 under MANDATORY GUIDELINES AND CRITERIA).

There was some controversy across the state regarding Native American majority districts, the splitting of counties or towns, and the sharing of districts between counties. However, the Commission followed its criteria and made its decisions based on the good of the entire state.

At each public hearing, the testimony was well-received and many interested parties spoke to the issues that concerned them. The Commission gave each region 7 days to submit written comment in addition to the oral testimony received. The Commission often considered the concerns of the public and amended a plan to suit those concerns or proposed a new alternative plan altogether.

Notices of the public hearings were sent to newspapers, County Clerk and Recorders, state and county central committees, legislators, tribal leaders, and interested persons; yet, many persons believed that there was not sufficient public notice. Media coverage was less than expected.

The use of the computer system was a success. The ability to develop alternative plans and amendments quickly was an advantage in the compressed timeframe available. There are refinements that need to be made in the census data. It is hoped that those who assist Montana from the U. S. Bureau of the Census will attempt to educate and train those who must eventually rely on this information at the county level. Many of the census block configurations are too large or include population from separate areas joined in the same census block. The Commission did not divide any

census blocks, leaving a predicament for some election officials at the county level in the development of precincts. Hopefully, the Montana Clerk and Records Association and the U.S. Bureau of the Census can work together toward a standard for the future. A geographic-based system is certainly going to be used, but the counties need assistance in the transition period.

The development of maps for distribution and display at public hearings must be improved. Complaints were heard throughout the state, despite repeated attempts at improving the clarity of the maps. A combination of technology and education in mapreading skills is necessary. It was necessary to use more than one map to decipher the district boundaries, which caused confusion for many. All counties will receive census block information, in addition to illustrative maps, that can be used to determine exact district boundaries.

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## ENDNOTES

1. Art. VI, §1, Mont. Const. 1889.
2. Peter Johnson, "State Joins Others at Bottom End of National Population Charts," Great Falls Tribune, April 1, 1992.
3. Art. V, §4, Mont. Const. 1889.
4. Art. VI, §2, Mont. Const. 1889.
5. Art. VI, §3, Mont. Const. 1889.
6. Art. VI, §4, Mont. Const. 1889.
7. Art. VI, §5, 6, Mont. Const. 1889.
8. Reference to 369 U.S. 186, 197-98 (1962) in Reapportionment Law: The 1990s, NCSL, October 1989, p. 17.
9. 372 U.S. 368 (1963).
10. 376 U.S. 1 (1964).
11. 377 U.S. 533, 568 (1964).
12. *Ibid.*, p. 579.
13. Population Decline in Montana, Jobes, et al., Burton K. Wheeler Center, Montana State University, Bozeman, 1991, p. 15.
14. Roberts v. Babcock, 246 F. Supp. 396 (D.C. Mont. 1965).
15. Ch. 273, L. 1965.
16. 35 A.G. Op. 12, 26 (1973).
17. Ellis Waldron, Legislative Reapportionment, Montana Constitutional Convention Memorandum No. 10, Montana Constitutional Convention Commission, 1971-72, p. 35.
18. Art. V, §6, Mont. Const. 1972 (from compiler comments). An amendment was proposed by initiative petition and adopted at the general election of November 5, 1974, as Constitutional Initiative No. 1, effective December 31, 1974.
19. Art. V, §14 (4), Mont. Const. 1972.
20. State v. Montana Districting and Apportionment Commission, cited in "Report and Recommendations of the Montana Districting and Apportionment Commission," Montana Legislative Council, December 1982, p. 8.

21. Johnson.
22. McBride v. Mahoney, 573 F. Supp. 913, 40 St. Rep. 1907 (D.C. Mont. 1983).
23. 410 U.S. 315 (1973).
24. McBride v. Mahoney.
25. 42 U.S.C. 1973b, as amended.
26. Art. V, §2, Mont. Const. 1972.
27. 35 A.G. Op. 12 (1973).
28. Section 5-1-106, MCA.
29. This information was provided by Henry C. Trenk, Director of Legislative Services, Montana Legislative Council, September 21, 1992.
30. Information taken from "Changes in Montana Population: Summary and Analysis," Tom Gomez, Montana Legislative Council, October 1991.



## APPENDIX





APPENDIX  
HOUSE AND SENATE DISTRICT NUMBERS AND HOLDOVER SENATOR ASSIGNMENTS  
ADOPTED 11/30/92

Current HD#	Adopted Plan HD#	NEW Assigned House District Number	NEW Assigned Senate District Number	Assigned Holdover Senator
24	150	1	1	
23	149	2	1	
25	151	3	2	Sen. Gerry Devlin
26	152	4	2	
100	154	5	3	Sen. Bill Yellowtail
99	153	6	3	
27	155	7	4	
31	168	8	4	
87	189	9	5	Sen. Tom Keating
88	190	10	5	
95	197	11	6	Sen. Tom Hager
96	198	12	6	
93	195	13	7	
94	196	14	7	
97	199	15	8	Sen. Gary Forrester
98	100	16	8	
92	194	17	9	
91	193	18	9	
90	192	19	10	Sen. Bruce Crippen
89	191	20	10	
86	188	21	11	
85	187	22	11	
84	186	23	12	
83	185	24	12	
81	184	25	13	
82	183	26	13	
77	378	27	14	
78	382	28	14	
80	381	29	15	Sen. Dorothy Eck
79	380	30	15	
new	379	31	16	
76	377	32	16	
74	335	33	17	Sen. Chuck Swysgood
73	534	34	17	
72	533	35	18	Sen. Judy Jacobson
71	532	36	18	
70	531	37	19	Sen. J.D. Lynch
68	530	38	19	
75	576	39	20	
32	569	40	20	
33	565	41	21	
34	564	42	21	
37	563	43	22	Sen. Bill Wilson
38	560	44	22	
36	562	45	23	
35	561	46	23	
41	557	47	24	
40	558	48	24	

Current HD#	Adopted Plan HD#	NEW Assigned House District Number	NEW Assigned Senate District Number	Assigned Holdover Senator
39	559	49	25	Sen. Ken Mesaros
42	570	50	25	
43	571	51	26	
44	572	52	26	
45	573	53	27	Sen. Sue Bartlett
46	574	54	27	
47	575	55	28	
48	328	56	28	
67	329	57	29	Sen. Bob Pipinich
65	327	58	29	
64	126	59	30	
63	125	60	30	
62	124	61	31	Sen. Terry Klampe
61	123	62	31	
60	122	63	32	Sen. Van Valkenburg
59	120	64	32	
56	118	65	33	
55	117	66	33	
57	119	67	34	
58	121	68	34	
54	116	69	35	Sen. Jeff Weldon
new	115	70	35	
52	114	71	36	Sen. Barry Stang
51	111	72	36	
53	113	73	37	Sen. Ethel Harding
50	112	74	37	
49	110	75	38	
new	109	76	38	
6	106	77	39	
5	107	78	39	
4	105	79	40	Sen. Bob Brown
3	103	80	40	
1	101	81	41	
2	104	82	41	
8	102	83	42	Sen. John Harp
7	108	84	42	
9	136	85	43	
10	137	86	43	
11	556	87	44	
12	138	88	44	
13	139	89	45	
14	140	90	45	
15	141	91	46	
16	142	92	46	
29	466	93	47	Sen. John Hertel
30	467	94	47	
17	243	95	48	Sen. Daryl Toews
18	244	96	48	
19	246	97	49	Sen. Dennis Nathe
20	245	98	49	
28	147	99	50	Sen. Larry Tveit
22	148	100	50	



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